

STATE OF WISCONSIN
Department of Commerce

In the Matter of the PECFA Appeal of

Bruce Stravinski
Interstate Towing & Auto Repair Inc
N5755 State Hwy 78
Portage WI 53901

PECFAClaim #53901-9999-82A/B
Hearing #03-79 and #03-80

FINAL DECISION

P R E L I M I N A R Y R E C I T A L S

Pursuant to a petition for hearing filed April 24, 2003, under §101.02(6)(e), Wis. Stats., and Chapt Comm §47.53, Wis. Adm. Code, to review a decision by the Department of Commerce, a consolidated hearing was commenced on November 17, 2003, at 201 West Washington Street, Madison, Wisconsin.

The issue for determination is whether the Department's decision dated 3/26/03 was correct with regard to the items identified in Petitioner's Appeal filed on 4/24/03. The Parties agreed to consolidate the Petitioner's appeal in hearing #03-79 and in hearing #03-80 because the same issues are presented. Accordingly, the issues for determination are treated as one.

There appeared in this matter the following persons:

PARTIES IN INTEREST:

Bruce Stravinski
Interstate Towing & Auto Repair Inc
N5755 State Hwy 78
Portage WI 53901

(In Person)

Department of Commerce

PECFA Bureau
201 West Washington Avenue
PO Box 7838
Madison WI 53707-7838

By: Joseph R. Thomas
Department of Commerce
201 W. Washington Ave.
PO Box 7838
Madison WI 53707-7838

The authority to issue a decision in this matter has been delegated to the undersigned by order of the Secretary dated October 23, 2003. The matter now being ready for decision, I hereby issue the following:

FINDINGS OF FACT

Because of the presence of petroleum contamination, the Petitioner engaged in investigative and remedial activities to clean up his property.

During the hearing, the parties agreed that on April 1, 2002, the Petitioner received final closure from the Department of Natural Resources ("DNR") indicating that no further remedial action was necessary on the Petitioner's property. Relative to the items listed in the Petitioner's appeal, both parties also agreed that any interest incurred before May 31, 2002 was eligible for reimbursement by the Department. Interest incurred after this date, however, would not be reimbursable according to statutory law. The Petitioner does not dispute that included in his appeal is an amount of \$2,3896.36, which reflects interest costs incurred after May 31, 2003¹. The Petitioner also does not dispute that his claim for reimbursement was submitted on October 16, 2002.

¹ The Petitioner also included other interest charges associated with costs from an outstanding invoice. Both parties agreed that the proper procedure for determining the eligibility of any/all of these costs was through a claim review process.

DISCUSSION AND CONCLUSIONS OF LAW

Wis. Stat. §101.143(cc)1.a. states:

If an applicant's final claim is submitted more than 120 days after receiving written notification that no further remedial action is necessary with respect to the discharge, interest costs incurred by the applicant after the 60th day after receiving that notification are not eligible costs.

In the instant case, the Petitioner's claim for reimbursement was submitted 198 days after he received written notification that no further remedial action was necessary on his property. The \$23896.36 costs the Petitioner appeals reflects interest incurred more than 60 days after the Petitioner received his closure letter. According to Wis. Stat. §101.143(cc)1.a. these interest costs are not eligible for reimbursement.

DECISION

The Department's decision to deny reimbursement for \$2,389.36 of the Petitioner's interest costs was correct.

NOTICE TO PARTIES

Dated: _____



Mari A. Samaras-White
Administrative Law Judge
Department of Commerce
PO Box 7970
Madison WI 53707-7970

copies to:

Bruce Stravinski
Interstate Towing & Auto Repair Inc
N5755 State Hwy 78
Portage WI 53901

Joseph R. Thomas
Department of Commerce
201 W. Washington Ave.
PO Box 7838
Madison WI 53707-7838

REQUEST FOR REHEARING/JUDICIAL REVIEW

Hearing #03-80
Commerce # 53901-9999-82B

Request for New Hearing

Petitions for new hearings must be received no later than 20 days after the mailing date of this hearing decision.

If, after you receive the decision, you believe it was based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. **To ask for a new hearing**, send or deliver a written request to Rehearing Request, Department of Commerce, Office of Legal Counsel, 201 W. Washington Avenue, 6th Floor, PO Box 7970, Madison, WI 53707-7970. Rehearing requests may also be filed by fax at the following number: (608) 266-3447. Faxed rehearing requests received after 4:30 p.m. on a business day will be filed effective the next business day.

Your request must explain why you believe the hearing examiner's decision is wrong. If you have new evidence to submit, you must describe your new evidence and explain why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or on the discovery of new evidence which could not have previously been obtained through due diligence on your part, your request will be denied.

The petition for new hearing must also be sent or faxed to all other parties named in this decision as "PARTIES IN INTEREST." **Late requests cannot be granted.** The process for asking for a new hearing is in Sec. 227.49 of the state statutes

Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the mailing date of this hearing decision as indicated below (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Secretary, Department of Commerce, Office of the Secretary, 201 W. Washington Avenue, 6th Floor, PO Box 7970, Madison, WI 53707-7970.

The petition for judicial review must also be served on all other parties named as "PARTIES IN INTEREST". **Late requests cannot be granted.** The process for judicial review is described in Sec. 227.53 of the statutes.

PARTIES IN INTEREST:

Bruce Stravinski
Interstate Towing & Auto Repair Inc
N5755 State Hwy 78
Portage WI 53901

Joseph R.. Thomas
Assistant Legal Counsel
Office of the Secretary
Department of Commerce

Date Mailed: _____

Mailed By: _____